

**TITLE 20 ENVIRONMENTAL PROTECTION VERSION 06 JULY 2004**  
**CHAPTER 2 AIR QUALITY (STATEWIDE)**  
**PART 71 OPERATING PERMIT EMISSIONS FEES**

**20.2.71.1 ISSUING AGENCY:** Environmental Improvement Board.  
[11/30/95; 20.2.71.1 NMAC - Rn, 20 NMAC 2.71.100 10/31/02]

**20.2.71.2 SCOPE:** All persons required to obtain a permit under 20.2.70 NMAC (Operating Permits).  
[11/30/95; 0.2.71.2 NMAC - Rn, 20 NMAC 2.71.101 10/31/02]

**20.2.71.3 STATUTORY AUTHORITY:** Environmental Improvement Act, NMSA 1978, section 74-1-8 (A)(4) and Air Quality Control Act, NMSA 1978, sections 74-2-1 et seq., including specifically, section 74-2-7(B)(5).  
[11/30/95; 20.2.71.3 NMAC - Rn, 20 NMAC 2.71.102 10/31/02]

**20.2.71.4 DURATION:** Permanent.  
[11/30/95; 20.2.71.4 NMAC - Rn, 20 NMAC 2.71.103 10/31/02]

**20.2.71.5 EFFECTIVE DATE:** November 30, 1995.  
[11/30/95; 20.2.71.5 NMAC - Rn, 20 NMAC 2.71.104 10/31/02]  
[The latest effective date of any section in this Part is 10/31/02.]

**20.2.71.6 OBJECTIVE:** The objective of this Part is to establish a schedule of operating permit emission fees.  
[11/30/95; 20.2.71.6 NMAC - Rn, 20 NMAC 2.71.105 10/31/02]

**20.2.71.7 DEFINITIONS:** In addition to the terms defined in 20.2.2 NMAC (Definitions), as used in this Part:

**A. "Allowable emission rate"** means the maximum emission allowed by the more stringent emission limitation applicable to the source contained in:

- (1) Any New Mexico Air Quality Control Regulation;
- (2) Any federal standard of performance, emission limitation, or emission standard adopted pursuant to 42 U.S.C. Section 7411 or 7412; or
- (3) Any condition within a construction or operating permit issued by the Department.

**B. "Emissions unit"** means any part or activity of a stationary source that emits or has the potential to emit any fee pollutant.

~~**C. "Existing stationary source"** means a stationary source which commenced operation on or before October 1, 1993.~~

**D. "Fee pollutant"** means:

- (1) Sulfur dioxide, nitrogen dioxide, carbon monoxide, total suspended particulate matter, and volatile organic compounds; and
- (2) Any hazardous air pollutant that is subject to any standard promulgated pursuant to section 112 of the Federal Act.

**E. "Fugitive emissions"** means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally-equivalent opening.

**F. "Hazardous air pollutant"** means an air contaminant that has been classified as a hazardous air pollutant pursuant to section 112 of the Federal Act.

~~**G. "New stationary source"** means a stationary source which commenced operation subsequent to October 1, 1993.~~

**H. "Operator"** means the person or persons responsible for the overall operation of a facility.

**I. "Owner"** means the person or persons who own a facility or part of a facility.

**J. "Part"** means an air quality control regulation under Title 20, Chapter 2 of the New Mexico Administrative Code, unless otherwise noted; as adopted or amended by the Board.

~~K. "Potential to emit" means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is federally enforceable. The potential to emit for nitrogen dioxide shall be based on total oxides of nitrogen.~~

~~L. "Standby equipment" means an emissions unit which on a temporary basis replaces equipment used in normal operation, and which either has an allowable emission rate or potential to emit for each fee pollutant that is equal to or less than the equipment replaced, or which does not operate for a period exceeding 500 hours per calendar year.~~

M. "Stationary source" means any building, structure, facility, or installation that emits or may emit any air pollutant.

[11/30/95; 20.2.71.7 NMAC - Rn, 20 NMAC 2.71.107 10/31/02]

**20.2.71.8 AMENDMENT AND SUPERSESSON OF PRIOR REGULATIONS:** This Part amends and supersedes Air Quality Control Regulation (AQCR) 771 -- Operating Permit Emission Fees, filed November 15, 1993, as amended.

A. All references to AQCR 771 in any other rule shall be construed as a reference to this Part.

B. The amendment and supersession of AQCR 771 shall not affect any administrative or judicial enforcement action pending on the effective date of such amendment nor the validity of any permit issued pursuant to AQCR 771.

[11/30/95; 20.2.71.8 NMAC - Rn, 20 NMAC 2.71.106 10/31/02]

**20.2.71.9 DOCUMENTS:** Documents cited in this Part may be viewed at the New Mexico Environment Department, Air Quality Bureau, Runnels Building, 1190 Saint Francis Drive, Santa Fe, NM 87505 [2048 Galisteo St., Santa Fe, NM 87505].

[11/30/95; 20.2.71.9 NMAC - Rn, 20 NMAC 2.71.108 10/31/02]

**20.2.71.10 to 20.2.71.108 [RESERVED]**

**20.2.71.109 APPLICABILITY:** Each owner or operator required to obtain an operating permit under 20.2.70 NMAC (Operating Permits) shall be subject to the requirements of this Part.

[11/30/95; 20.2.71.109 NMAC - Rn, 20 NMAC 2.71.109 10/31/02]

**20.2.71.110 FEE REQUIREMENT:**

A. An annual operating permit emission fee shall be paid to the Department by each owner or operator subject to this Part.

B. The fee shall be assessed:

(1) For a major source as defined in 20.2.70 NMAC (Operating Permits), for all emissions units; ~~and~~

(2) For all other stationary sources, for emissions units which cause the source to be subject to 20.2.70 NMAC; ~~and~~

(3) For excess emissions for the source categories in paragraphs (1) and (2) of subsection B of section 20.2.71.110-B NMAC.

C. The fee shall be calculated in conformance with 20.2.71.111 NMAC.

[11/30/95; 20.2.71.110 NMAC - Rn, 20 NMAC 2.71.110 10/31/02]

**20.2.71.111 FEE DETERMINATION:**

A. Fee Calculation:

(1) The annual fee shall be calculated by taking the product of the allowable emission rate for each fee pollutant expressed in tons per year and the appropriate fee per ton of pollutant listed in 20.2.71.112 NMAC. ~~In cases where an allowable emission rate does not exist, the fee shall be calculated using the potential to emit.~~

(2) The allowable emission rate, ~~or potential to emit~~, which shall be used in the fee calculation is:

(a) ~~for an existing stationary source, the allowable emission rate or potential to emit which exists on October 1, 1993 for the first annual fee, and, the allowable emission rate or potential to emit which exists on December 31 for each subsequent annual fee year; and~~

(b) ~~for a new stationary source, beginning with the first calendar year the source commences operation, the allowable emission rate or potential to emit which exists on December 31 of the first calendar year~~

~~operation commenced. The failure of an owner or operator to include the correct information in a permit application, resulting in incorrect allowable emissions in a permit issued under 20.2.70 NMAC, 20.2.72 NMAC, or 20.2.74 NMAC, shall not preclude the Department from requiring payment for the correct emissions from the time payment would have been first due.~~

(3) Allowable emission rates ~~or potential to emit~~ shall be calculated to the tenth of a ton for each emission unit and then summed to determine the tons per year for the facility. Total facility tons per year quantities shall be determined by rounding amounts equal to or greater than five tenths of a ton upward and amounts lower than five tenths of a ton downward.

~~(4) Emissions from those operations determined to be insignificant activities by the Department under 20.2.70 NMAC shall not be included in the fee calculation.~~

(5) Fugitive emissions which have an allowable emission rate shall be included in the fee calculation.

~~(6) Emissions from standby equipment shall not be included in the fee calculation.~~

(7) Any quantity of a pollutant which is assessed a fee because it is a hazardous air pollutant shall not be assessed additional fees.

(8) A maximum of six thousand tons per year of any one fee pollutant shall be used in the fee calculation.

**B. Source Shutdown:**

(1) The annual fee shall not be reduced due to lack of operation of any emissions unit, except when:

(a) the discontinued operation is accounted for in an allowable emission rate contained within a construction or operating permit issued by the Department;

(b) a construction or operating permit issued by the Department has been discontinued or terminated and the source ceased operation; ~~or~~

~~(c) with respect to equipment for which the potential to emit is used as the basis for fee calculation, the equipment has been removed from the stationary source and the owner or operator provided written notification to the Department prior to December 31 of the year it was removed; or~~

(d) the emissions unit is located at a stationary source which meets the criteria of paragraph (2) of subsection B of 20.2.71.111 NMAC.

(2) The annual fee shall be reduced when all operations at a stationary source have been shutdown for a period greater than 60 consecutive days within a calendar year. In this case, the fee calculation shall be adjusted by reducing the annualized allowable emission rate, or potential to emit if applicable, for each day the stationary source was shutdown.

**C. Excess Emissions Fee**

(1) ~~The excess emission fee shall be based on all excess emissions of fee pollutants reported or required to be reported by a stationary source through December 31 in accordance with subsection E of 20.2.70.302 NMAC. The fee shall be calculated by taking the product of the excess emission for each fee pollutant expressed in tons per year and the appropriate fee per ton of pollutant listed in 20.2.71.112 NMAC.~~

~~(2) Total facility tons per year quantities of excess emissions shall be determined by rounding amounts equal to or greater than five tenths of a ton upward and amounts lower than five tenths of a ton downward.~~

~~(3) Any quantity of a pollutant which is assessed an excess emissions fee because it is a hazardous air pollutant shall not be assessed additional excess emissions fees.~~

[11/30/95; 20.2.71.111 NMAC - Rn, 20 NMAC 2.71.111 10/31/02]

**20.2.71.112 EMISSION FEE:**

A. The fee for each fee pollutant shall be ~~\$10.25-12.00~~ per ton on an annual basis, except as provided for in subsection B of 20.2.70.112 NMAC. ~~This fee shall increase to \$14.00 per ton on an annual basis for fees due June 1, 2006; to \$16.00 per ton on an annual basis for fees due June 1, 2007; and to \$18.00 per ton on an annual basis for fees due June 1, 2008 and thereafter.~~

B. The fee for each hazardous air pollutant shall be ~~\$150.00-165.00~~ per ton on an annual basis for any stationary source which is only major as defined in 20.2.70 NMAC for any hazardous air pollutant.

C. ~~The fee per ton of excess emissions shall be identical to the fee per ton of allowable emissions.~~

D. ~~Beginning on January 1, 2009, the fees referenced in this section shall be changed annually by the percentage, if any, of any annual increase in the consumer price index in accordance with section 502(b)(3)(B)(v) of the federal clean air act.~~

[11/30/95; 20.2.71.112 NMAC - Rn, 20 NMAC 2.71.112 10/31/02]

**20.2.71.113 FEE PAYMENT:**

**A. Schedule:**

- ~~(1) The first annual fee shall be paid as follows:~~
- ~~(a) for each existing stationary source, fifty percent (50%) of the total fee shall be due on or before January 1, 1994, and the remaining fifty percent (50%) of the total fee shall be due on or before June 1, 1994; and~~
- ~~(b) for each new stationary source which commences operation prior to January 1, 1994, the annual fee shall be due by June 1, 1994 for the preceding calendar year.~~
- ~~(2)~~ ~~Beginning with the year 1995,~~ The Department shall by April 1 of each year provide to each owner or operator subject to this Part notification, which shall contain:
- (a) the ~~annual emissions~~ fee based on the requirements of this Part which is currently due; and
- (b) a summary of the basis for the required fee.
- ~~(23)~~ Upon discovery of an error in any past notification of emissions fees due, the Department shall promptly notify the owner or operator and provide credit for overcharges or require payment for undercharges.
- ~~(3)~~ ~~Beginning with the year 1995,~~ Each owner or operator shall pay by June 1 the ~~annual emissions~~ fee contained in the Department's notification required under paragraph ~~(2)~~ of subsection A of section 20.2.71.113 NMAC.
- ~~(4) Each owner or operator shall pay invoices based on notices of errors in past notifications within 60 days of the invoice date.~~
- ~~(5) The Department shall commence invoicing for excess emission fees for excess emissions reported in calendar year 2005.~~

**B. Payment:**

- (1) Fees shall be remitted in the form of a certified check or money order made payable to the Environment Department and submitted to the Air Quality Bureau at the address specified in the notice.
- (2) Upon receipt of the check or money order, it shall be deposited in the state air quality permit fund.

**C. Nonpayment:** Failure to remit the full fee required by the due date specified in this section is a violation of this Part and may subject the owner or operator to:

- (1) civil penalties for each day of noncompliance as provided for in the New Mexico Air Quality Control Act, section 74-2-12.1, NMSA 1978;
- (2) the enforcement provisions of the New Mexico Air Quality Control Act, section 74-2-12, NMSA 1978, which includes suspension or revocation of any permit.
- [11/30/95; 20.2.71.113 NMAC - Rn, 20 NMAC 2.71.113 10/31/02]

**HISTORY OF 20.2.71 NMAC:**

**Pre NMAC History:** The material in this part was derived from that previously filed with the commission of public records - state records center and archives.

EIB/AQCR 771, Air Quality Control Regulation 771 - Operating Permit Emission Fees, filed 11/15/93.

**History of Repealed Material: [RESERVED]**

**Other History:**

EIB/AQCR 771, Air Quality Control Regulation 771 - Operating Permit Emission Fees, filed 11/15/93 was **renumbered** into first version of the New Mexico Administrative Code as 20 NMAC 2.71, Operating Permit Emission Fees, filed 10/30/95;

20 NMAC 2.71, Operating Permit Emission Fees, filed 10/30/95 was **renumbered, reformatted and replaced** by 20.2.71 NMAC, Operating Permit Emission Fees, effective 10/31/02.